H-2102.1 _____

SUBSTITUTE HOUSE BILL 1158
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State of Washington   **58th Legislature**   **2003 Regular Session**

By House Committee on State Government (originally sponsored by Representatives Miloscia, Shabro, Hunt, Haigh, McDermott, Tom and Kenney; by request of Secretary of State)

READ FIRST TIME 03/03/03.

1   AN ACT Relating to voting systems certification; amending RCW
2 29.33.041, 29.33.081, 29.33.130, 29.33.145, 29.33.300, 29.33.310,
3 29.33.320, 29.33.330, 29.33.350, 29.04.200, 29.04.200, and 29.85.051;
4 adding a new section to chapter 29.01 RCW; adding a new section to
5 chapter 29.85 RCW; prescribing penalties; and providing a contingent
6 effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8   **Sec. 1.** RCW 29.33.041 and 1990 c 59 s 18 are each amended to read
9 as follows:
10   The secretary of state shall inspect, evaluate, ((and publicly))
11 test, and hold a public demonstration of all voting systems or
12 components of voting systems that are submitted for review under RCW
13 29.33.051. The secretary of state shall determine whether the voting
14 systems conform with all of the requirements of this title, the
15 applicable rules adopted in accordance with this title, and with
16 generally accepted safety requirements. The secretary of state shall
17 also determine whether the voting systems accommodate ranked voting.
18 The secretary of state shall post the report of certification to a
19 publicly available electronic medium and transmit a ((copy of the

1 ~~report of any~~)) <u>notice of the</u> examination ((~~under this section~~)),
2 within thirty days after completing the examination, to the county
3 auditor of each county.

4   **Sec. 2.** RCW 29.33.081 and 1990 c 59 s 21 are each amended to read
5 as follows:
6   ((~~If~~)) <u>Only</u> voting systems or devices or vote tallying systems
7 ((~~are to~~)) <u>that have been approved by the secretary of state may</u> be
8 used for conducting a primary or election((<u>,</u> ~~only those that have the~~
9 ~~approval of the secretary of state or had been approved under this~~
10 ~~chapter or chapter 29.34 RCW before March 22, 1982, may be used~~)). Any
11 modification, change, or improvement to any voting system or component
12 of a system ((~~that~~)) <u>must be submitted to the secretary of state for</u>
13 <u>review. After review, the modification may be accepted if it</u> does not
14 impair ((~~its~~)) <u>system</u> accuracy, efficiency, or capacity or extend
15 ((~~its~~)) <u>system</u> function((<u>,</u> ~~may be made without~~))<u>. If, after review,</u>
16 <u>the secretary of state determines that the modification does impair</u>
17 <u>system accuracy, efficiency, or capacity or extend system function, the</u>
18 <u>modification must be submitted for</u> reexamination or reapproval by the
19 secretary of state under RCW 29.33.041.

20   **Sec. 3.** RCW 29.33.130 and 1990 c 59 s 22 are each amended to read
21 as follows:
22   The county auditor of a county in which voting systems are used is
23 responsible for the preparation, maintenance, and operation of those
24 systems<u>,</u> and <u>must provide proof that the system and its component</u>
25 <u>software, in the version used, are state certified. The auditor</u> may
26 employ and direct persons to perform some or all of these functions.

27   **Sec. 4.** RCW 29.33.145 and 1998 c 58 s 1 are each amended to read
28 as follows:
29   An agreement to purchase or lease a voting system or a component of
30 a voting system is subject to that system or component passing an
31 acceptance test<u>, conducted by the county auditor as purchaser or</u>
32 <u>lessee,</u> sufficient to demonstrate that the equipment is the same as
33 that certified by the secretary of state and that the equipment is
34 operating correctly as delivered to the county.

1   **Sec. 5.** RCW 29.33.300 and 1990 c 59 s 26 are each amended to read
2   as follows:
3   No voting device ((shall)) may be approved by the secretary of
4   state unless it:
5   (1) Secures to the voter secrecy in the act of voting;
6   (2) Permits the voter to vote for any person for any office and
7   upon any measure that he or she has the right to vote for;
8   (3) Permits the voter to vote for all the candidates of one party
9   or in part for the candidates of one or more other parties;
10   (4) Correctly registers all votes cast for any and all persons and
11   for or against any and all measures;
12   (5) Provides that a vote for more than one candidate cannot be cast
13   by one single operation of the voting device or vote tally system
14   except when voting for president and vice-president of the United
15   States; and
16   (6) Except for functions or capabilities unique to this state, has
17   been tested((, certified, and used in at least one other state or
18   election jurisdiction)) and approved by the appropriate independent
19   testing authority approved by the federal elections commission or its
20   statutory successor.

21   **Sec. 6.** RCW 29.33.310 and 1990 c 59 s 27 are each amended to read
22   as follows:
23   The ballot ((on a single voting device shall)) displayed to a voter
24   may not contain the names of candidates for the offices of United
25   States representative, state senator, state representative, county
26   council, or county commissioner in more than one district. ((In all
27   general elections, primaries, and special elections, in each polling
28   place the voting devices containing ballots for candidates from each
29   congressional, legislative, or county council or commissioner district
30   shall be grouped together and physically separated from those devices
31   containing ballots for other districts. Each voter shall be directed
32   by the precinct election officers to the correct group of voting
33   devices.))

34   **Sec. 7.** RCW 29.33.320 and 1990 c 59 s 28 are each amended to read
35   as follows:

1   The secretary of state shall not approve a vote tallying system
2 unless it:
3   (1) Correctly counts votes on ballots on which the proper number of
4 votes have been marked for any office or issue;
5   (2) Ignores votes marked for any office or issue where more than
6 the allowable number of votes have been marked, but correctly counts
7 the properly voted portions of the ballot;
8   (3) Accumulates a count of the specific number of ballots tallied
9 for each precinct, total votes by candidate for each office, and total
10 votes for and against each issue of the ballot in that precinct;
11   (4) Accommodates rotation of candidates' names on the ballot under
12 RCW 29.30.040;
13   (5) Produces precinct and cumulative totals in printed form; and
14   (6) Except for functions or capabilities unique to this state, has
15 been tested((, certified, and used in at least one other state or
16 election jurisdiction)) and approved by the appropriate independent
17 testing authority approved by the federal elections commission or its
18 statutory successor.

19   **Sec. 8.** RCW 29.33.330 and 1990 c 59 s 25 are each amended to read
20 as follows:
21   In preparing a voting device for a primary or election, a record
22 ((shall)) must be made of the ballot format installed in each device
23 and the precincts or portion of a precinct for which that device has
24 been prepared. Except where provided by a rule adopted under RCW
25 29.04.210, after being prepared for a primary or election, each device
26 ((shall)) must be sealed with a uniquely numbered seal and provided to
27 the inspector of the appropriate polling place.

28   **Sec. 9.** RCW 29.33.350 and 1998 c 58 s 2 are each amended to read
29 as follows:
30   At least three days before each state primary or general election,
31 the office of the secretary of state shall provide for the conduct of
32 tests of the programming for each vote tallying system to be used at
33 that primary or general election. The test must verify that the system
34 will correctly count the vote cast for all candidates and on all
35 measures appearing on the ballot at that primary or general election.
36 The office of the secretary of state shall adopt rules specifying the

1 manner of conducting these programming tests. The test ((shall)) must
2 verify the capability of the vote tallying system to perform all of the
3 functions that can reasonably be expected to occur during conduct of
4 that particular primary or election. If any error is detected, the
5 cause ((shall)) must be determined and corrected, and an errorless
6 total ((shall)) must be produced before the primary or election.

7   Such tests ((shall)) must be observed by at least one
8 representative from each major political party, if representatives have
9 been appointed by the respective major political parties and are
10 present at the test, and ((shall)) must be open to candidates, the
11 press, and the public. The county auditor and any political party
12 observers shall certify that the test has been conducted in accordance
13 with this section. The county auditor shall provide proof that the
14 version of the voting system and software used are state certified.
15 Copies of ((this)) these certifications ((shall)) must be retained by
16 the secretary of state and the county auditor.   All programming
17 materials, test results, and test ballots ((shall)) must be securely
18 ((sealed)) stored until the day of the primary or general election.

19   Sec. 10. RCW 29.04.200 and 1998 c 245 s 26 are each amended to
20 read as follows:
21   (1) ((Beginning January 1, 1993,)) No voting device or machine may
22 be used ((in a county with a population of seventy thousand or more))
23 to conduct a primary or general or special election in this state
24 unless it correctly records ((on)) a separate ((ballot)) record of the
25 votes cast by each elector for any person and for or against any
26 measure and ((such separate ballots)) the cast vote records are
27 available for audit purposes after ((such a)) the primary or election.
28   (2) ((Beginning January 1, 1993,)) The secretary of state shall not
29 certify under this title any voting device or machine ((for use in
30 conducting)) to conduct a primary or general or special election in
31 this state ((unless the device or machine correctly records on a
32 separate ballot the votes cast by each elector for any person and for
33 or against any measure and such separate ballots are available for
34 audit purposes after such a primary or election)) that uses punched
35 holes to record the voter's choices.
36   (((3) Beginning January 1, 1993, a county with a population of less
37 than seventy thousand may use a voting machine or device for conducting

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1 a primary or general or special election which does not record on a
2 separate ballot, available for audit purposes after the primary or
3 election, the votes cast by each elector for any person and for or
4 against any measure if:
5   (a) The device was certified under this title before January 1,
6 1993, for use in this state;
7   (b) The device otherwise satisfies the requirements of this title;
8 and
9   (c) Not more than twenty percent of the votes cast during any
10 primary or general or special election conducted after January 1, 1998,
11 in the county are cast using such a machine or device.
12   (4) The purpose of subsection (3) of this section is to permit less
13 populous counties to replace voting equipment in stages over several
14 years. These less populous counties are, nonetheless, encouraged to
15 secure as expeditiously as possible voting equipment which would
16 satisfy the requirements of subsection (1) of this section established
17 for more populous counties.))

18   **Sec. 11.** RCW 29.04.200 and 2003 c ... s 10 (section 10 of this
19 act) are each amended to read as follows:
20   (1) No voting device or machine may be used to conduct a primary or
21 general or special election in this state unless it correctly records
22 a separate record of the votes cast by each elector for any person and
23 for or against any measure and the cast vote records are available for
24 audit purposes after the primary or election.
25   (2) The secretary of state shall not certify under this title any
26 voting device or machine to conduct a primary or general or special
27 election in this state that uses punched holes to record the voter's
28 choices.
29   (3) Beginning January 1, 2006, no voting device or machine that
30 uses punched holes to record the voter's choices may be used to conduct
31 a primary or general or special election in this state.

32   **Sec. 12.** RCW 29.85.051 and 1991 c 81 s 4 are each amended to read
33 as follows:
34   A person is guilty of a gross misdemeanor who knowingly:
35   (1) Deceives any voter in recording his or her vote by providing

1 incorrect or misleading recording information or by providing faulty
2 election equipment or records; ((or))
3   (2) Records the vote of any voter in a manner other than as
4 designated by the voter; or
5   (3) Commits either of the acts under subsection (1) or (2) of this
6 section by electronic means.
7   Such a gross misdemeanor is punishable to the same extent as a
8 gross misdemeanor that is punishable under RCW 9A.20.021.

9   NEW SECTION. **Sec. 13.** A new section is added to chapter 29.01 RCW
10 to read as follows:
11   "Cast vote record" means a record or data element representing a
12 voter's unique set of choices. This may be a physical ballot or an
13 electronic record.

14   NEW SECTION. **Sec. 14.** A new section is added to chapter 29.85 RCW
15 to read as follows:
16   A person is guilty of a gross misdemeanor punishable under chapter
17 9A.20 RCW who knowingly:
18   (1) Tampers with or impedes the use of any form of electronic
19 voting or vote recording system; or
20   (2) Tampers with or impedes access to a vote reporting or election
21 results reporting system.

22   NEW SECTION. **Sec. 15.** Section 11 of this act takes effect once
23 the state receives funding from the federal government to replace
24 voting systems and vote tallying equipment as required in Public Law
25 107-252 (October 29, 2002), known as the "Help America Vote Act of
26 2002," including any amounts received under subsequent amendments to
27 the act. If federal funding is not provided by January 1, 2005,
28 section 11 of this act is void in its entirety.

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